

## REMARKS

### I. Introduction

In a final Office Action mailed on January 16, 2009, the Examiner rejected claims 3, 10-12, and 30-35 under 35 U.S.C. § 103(a) over a combination of U.S. Publication No. 2004-0064390 ("Pullen"), U.S. Publication No. 2004-0172311 ("Kauderer"), and "O\*NET 98 Data Dictionary" Release 1.0 ("ONET"). Claims 3, 10-12, and 30-35 are pending.

Applicant would like to thank Examiner Daye for her consideration during the telephone interview of February 23, 2009. During the interview, Examiner Daye and applicant's representative discussed the final rejection of the claims in view of the declarations and evidence filed on November 3, 2008. In particular, Examiner Daye and applicant's representative discussed the actual reduction to practice of applicant's claimed invention as evidenced by applicant's (1) implementation<sup>1</sup>, (2) demonstration of the claimed invention to the Social Security Administration<sup>2</sup>, and (3) commercial product<sup>3</sup>. Examiner Daye and applicant's representative further discussed Examiner Daye's request for "evidence to show that tests were performed under actual working conditions or a realistic simulation of working conditions and that the tests results are repeatable" (Office Action, January 16, 2009, p. 14). Applicant's representative pointed out that the case relied on by Examiner Daye states that "the invention must have been sufficiently tested to demonstrate that it will work for its intended purpose, but need not be in a commercially satisfactory stage of development" (*id.*, p. 12 *citing Wetmore v.*

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<sup>1</sup> Applicant's implementation of the eDot website questionnaire as early as August 16, 2002 (as reflected in Exhibits H-J and corroborated by a Declaration under 37 C.F.R. § 1.131 of Kevin Eskew).

<sup>2</sup> Applicant's implementation and demonstration of the eDOT software to the Social Security Administration on September 18, 2002 (as reflected in Exhibit A, pages 11-13 and corroborated by a Declaration under 37 C.F.R. § 1.131 of Mary Barros-Bailey and a Non-Disclosure Agreement executed by Mary Barros-Bailey prior to the demonstration of the eDot software to the Social Security Administration).

<sup>3</sup> Applicant's transfer of the eDot executable file ("EDot.exe") having a "Date Modified" date of September 20, 2002 to a CD-ROM for an October 1, 2002 release of the CD-ROM (as reflected in Exhibits F-G and corroborated by a Declaration under 37 C.F.R. § 1.131 of Kevin Eskew).

*Quick*, 536 F. 2d 937, 942 (CCPA 1976); emphasis added). Applicant's representative further pointed out that, in applicant's case, the evidence submitted shows that applicant had an actual commercial product prior to the filing dates of both the Pullen and Kauderer references. Since applicant had a commercial product prior to the filing dates of both the Pullen and Kauderer references, Examiner Daye agreed that evidence that the invention was "sufficiently tested" is not necessary in applicant's case. Applicant respectfully requests that Examiner Daye contact the undersigned attorney if she believes that any additional information regarding the interview is necessary. For reasons discussed in detail below, applicant respectfully submits that the pending claims are in condition for allowance.

II. Rejections under § 103(a)

The Examiner rejected claims 3, 10-12, and 30-35 under 35 U.S.C. § 103(a) over a combination of Pullen, Kauderer, and ONET. In applicant's response filed on November 3, 2008, applicant's argued that Pullen and Kauderer were removed as references as a result of applicant's actual reduction to practice of the claimed invention. In the present Office Action, the Examiner asserts that the evidence submitted together with applicant's response is insufficient to show an actual reduction to practice of the claimed invention (Office Action, January 16, 2009, pp.12-16). In particular, the Examiner states that

[T]o establish an actual reduction to practice...**requires a showing of the invention in a physical or tangible form** that shows every element of the count. For an actual reduction to practice, the invention must have been sufficiently tested to **demonstrate that it will work for its intended purpose**, but need not be in a commercially satisfactory stage of development...**The applicant is respectfully requested to provide actual documentation of repeated test results from tests performed in actual working conditions or in a realistic simulation of actual working conditions.**

(*id.* pp. 12, 15-16; emphasis original). As discussed above, applicant believes that the declarations and evidence submitted together with the response filed on November 3, 2008 clearly establish the actual reduction to practice of the claimed invention. First,

applicant submits that the evidence shows that the claimed invention was in a physical or tangible form prior to the filing dates of both the Pullen and Kauderer references as evidenced by the transfer of the eDOT executable file ("EDot.exe") having a "Date Modified" date of September 20, 2002 to a CD-ROM for an October 1, 2002 release of the CD-ROM (as reflected in Exhibits F-G and corroborated by a Declaration under 37 C.F.R. § 1.131 of Kevin Eskew)<sup>4</sup>. Second, because the evidence shows that applicant had an actual commercial product prior to the filing dates of both the Pullen and Kauderer references, applicant submits that evidence that the invention was sufficiently tested is not necessary in this case.

Because the Declarations and Exhibits filed November 3, 2008 demonstrate the actual reduction to practice of the claimed invention prior to September 26, 2002, applicant respectfully submits that Pullen and Kauderer are removed as references. Accordingly, because two of the three references are no longer prior art, applicant requests the withdrawal of the § 103(a) rejection. Should the Examiner wish to receive further information on the subject matter of the Declarations or Exhibits, the Examiner is encouraged to contact the undersigned representative, as she may be able to provide such information and answer any questions the Examiner may have.

### III. Conclusion

In view of the above remarks, applicant believes the pending claims are in condition for allowance. If the Examiner has any questions or believes that a telephone conference would expedite examination of this application, the Examiner is encouraged to call the undersigned directly at (206) 359-8077.

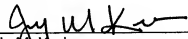
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<sup>4</sup> Applicant submits the actual reduction of the claimed invention to practice is further demonstrated by: (1) the implementation of the eDOT website questionnaire as early as August 16, 2002 (as reflected in Exhibits H-J, and corroborated by a Declaration under 37 C.F.R. § 1.131 of Kevin Eskew) and (2) the implementation and demonstration of the eDot software to the Social Security Administration on September 18, 2002 (as reflected in Exhibit A, pages 11-13, and corroborated by a Declaration under 37 C.F.R. § 1.131 of Mary Barros-Bailey and a Non-Disclosure Agreement executed by Mary Barros prior to the demonstration of the eDot software to the SSA).

Please charge any deficiencies or credit any overpayments to our Deposit Account No. 50-0665, under Order No. 333628003US1 from which the undersigned is authorized to draw.

Dated: 4/15/09

Respectfully submitted,

By   
Judy M. Kadoura  
Registration No.: 59,883  
PERKINS COIE LLP  
P.O. Box 1247  
Seattle, Washington 98111-1247  
(206) 359-8000  
(206) 359-7198 (Fax)  
Attorney for Applicant